

LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

By E-Filing

September 19, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 F Street, S.W.
Washington, D.C. 20423-0001

230974

**RE: FD 35496, Denver & Rio Grande Railway Historical Foundation
Petition for a Declaratory Order**

Dear Ms. Brown:

I am e-filing on behalf of the San Luis & Rio Grande Railroad ("SLRG") its
Reply in Opposition to Denver & Rio Grande Railway Historical Foundation's
request to file "Responses" submitted in the above-captioned proceeding.

Office of Proceedings

SEP 19 2011

Part of
Public Record

Respectfully submitted,



John D. Heffner

Enclosure

cc: Mr. Donald H. Shank
Eugene L. Farish, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FD 35496

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S
PETITION FOR A DECLARATORY ORDER**

**REPLY IN OPPOSITION BY
SAN LUIS & RIO GRANDE RAILROAD**

Submitted by
John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Dated: September 19, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FD 35496

**DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION'S
PETITION FOR A DECLARATORY ORDER**

**REPLY IN OPPOSITION BY
SAN LUIS & RIO GRANDE RAILROAD**

On August 23, 2011, the Denver & Rio Grande Railway Historical Foundation (“DRGHF”) purported to file with the Surface Transportation Board (“the Board”) a document seeking permission or “Leave” to file a Response to the Opposition Statements previously filed by both San Luis & Rio Grande Railroad and the City of Monte Vista.¹ In fact DRGHF’s filing appears to have been entered on the docket by the Board on September 8.² DRGHF represented that its “Responses” would be “forthcoming in the very near future.” SLRG has patiently waited in anticipation of what DRGHF might say but to no avail. None has been forthcoming. In view of the approaching deadline for submitting its timely response, SLRG submit its reply to DRGHF’s request. It should be denied.

¹ Hereafter SLRG and the City, respectively.

² D&RGHF sent out its Certificate of Service on September 1 and that document was apparently received by the Board on September 9.

ARGUMENT

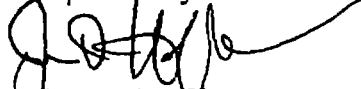
DRGHF's request should be denied for two simple reasons: 1) it is out of time and 2) Board procedure normally forbids the filing of a "reply to a reply." The opposition statements by SLRG and the City were both filed on or about August 1. The Board's Rules of Practice provide that "a reply or motion addressed to any pleading [be filed] within 20 days after the pleading is filed with the Board unless otherwise provided." 49 CFR 1104.13. This pleading was filed either 22 or more likely 30 days after filings by SLRG and the City. It fails to include the promised "Responses" as well as any explanation or justification for the late filing. SLRG would have filed a reply earlier but it has been waiting to see what DRGHF planned to say substantively before responding.

Second, DRGHF's request to submit "Responses" flies in the face of longstanding Board policy that normally forbids the acceptance of a reply to a reply. 49 CFR 1104.13(c). DRGHF's request does not offer any reason justifying a waiver of the Board's policy. The Springfield Terminal Railway Company-Petition for a Declaratory Order-Reasonableness of Demurrage Charges, Docket No. 40128, STB served June 11, 2010 (reply to a reply rejected). However, in the unlikely event the Board should accept DRGHF's "Responses" at the time they are filed, if ever, SLRG requests leave to submit a short substantive response to ensure a complete record.

CONCLUSION

The Board should promptly issue a decision rejecting DRGHF's request to file "Responses" as well as denying its Petition for a Declaratory Order.

Respectfully submitted,



John D. Heffner

John D. Heffner, PLLC

1750 K Street, N.W.

Suite 200

Washington, D.C. 20006

(202) 296-3334

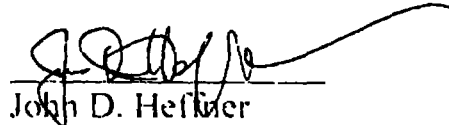
Dated: September 19, 2011

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I have mailed a copy of the "Reply in Opposition by San Luis & Rio Grande Railroad" to the following parties by first class U.S. mail this 19th day of September 2011:

Mr. Donald H. Shank
Rio Grande Southern Railroad Company, L.L.C.
20 N. Broadway St.
Monte Vista, CO 81144

Eugene L. Farish, Esq.
City Attorney
739 First Avenue
P.O. Box 430
Monte Vista, CO 81144


John D. Heffner